



## FISCAL MEMORANDUM

### HB 2346 - SB 2282

March 11, 2022

**SUMMARY OF BILL AS AMENDED (015273):** Requires, by July 1, 2023, or within one year after a utility is formed, certain utilities to prepare and implement a cyber security plan (CSP) and update the CSP every two years. Requires the Comptroller of the Treasury (COT), or the COT's designee, to verify that certain utilities have implemented a CSP. Requires certain utilities to submit documentation of the utility's compliance to the Tennessee Public Utilities Commission (TPUC) by July 1 each year. Prescribes penalties for any utility that fails to comply.

Requires the COT and the TPUC to enforce the provisions of the proposed legislation and to submit a report to certain General Assembly members, the Department of Safety (DOS), and the legislative librarian each year regarding compliance to the provisions and including utilities that have failed to submit proof of compliance.

### FISCAL IMPACT OF BILL AS AMENDED:

**Other Fiscal Impact – Due to multiple unknown factors, any recurring increase to state fee revenue to the General Fund or the Tennessee Public Utilities Commission cannot reasonably be determined. A precise mandatory increase to local expenditures due to the preparation and implementation of a cyber security plan and to the payment of any fees cannot reasonably be determined.\***

Assumptions for the bill as amended:

- Per the language of the proposed legislation, a “utility” means:
  - An entity subject to the jurisdiction of the Water and Wastewater Financing Board (WWFB), which includes:
    - Any county, metropolitan government, or incorporated town or city empowered to provide water or wastewater services; and
    - Any treatment authority, created pursuant to the Water and Wastewater Treatment Authority Act or the Regional Water and Wastewater Treatment Authority Act or by any public or private act of the General Assembly, that operates a water or wastewater facility.
  - An entity subject to the jurisdiction of the Utility Management Review Board (UMRB), which includes a utility district created in accordance with the Utility District Law of 1937, or by any public or private act.

- A cooperative;
  - A county-owned or municipal-owned utility that provides electric, broadband, natural gas, or propane services to the public; or
  - A public utility that provides electric, water, wastewater, or natural gas services.
- The proposed legislation does not define “cyber security plan,” but requires such a plan to provide for the protection of the utility’s facilities from unauthorized use, alteration, ransom, or destruction of electronic data.
- Public utilities, as defined by Tenn. Code Ann. § 65-4-101, do not include state or locally owned utilities, but only to the extent that the locally-owned entity distributes natural gas to retail customers within the municipal boundaries or urban growth boundaries of a Tennessee city or town adjoining such bordering state.
- Pursuant to Tenn. Code Ann. § 65-25-102 and § 65-25-134, cooperatives are nonprofit, non-governmental entities that are authorized to provide services within the cooperative’s service area. As cooperatives are nonprofit entities, any fiscal impact to state or local government is not significant.
- Based on information provided by the Tennessee Municipal Electric Power Association, most municipal utilities have cyber security protocols in place, but do not have a formal policy in writing. It is assumed that composing a written plan will not result in any significant impact to local government.
- Requiring any county-owned utility, utility district, local entity empowered to provide water and waste water services, and treatment authority to prepare, implement, and update a CSP will result in a mandatory increase to local expenditures. Costs to each utility will vary widely based on which utilities have pre-existing CSPs, the extent and timing of any contracting services to create a CSP, and the relative size of each utility’s service area. A precise, mandatory increase to recurring local expenditures cannot reasonably be determined.
- The proposed legislation requires the COT to enforce the requirement for entities subject to the WWFB and the UMRB, locally-owned utilities, and cooperatives, and to submit an annual report regarding compliance to the chairs of the Commerce Committee of the House of Representatives and the Commerce and Labor Committee of the Senate, the DOS, and the legislative librarian on the first Monday of February each year.
- Based on information provided by the COT, the department can implement the requirements of the proposed legislation using existing resources. There will be no impact to state government expenditures.
- The proposed legislation requires the TPUC to enforce the requirement for public utilities and to include with its annual report a separate report regarding compliance to the chairs of the Commerce Committee of the House of Representatives and the Commerce and Labor Committee of the Senate, the DOS, and the legislative librarian.
- Based on information provided by the TPUC, the commission can implement the requirements of the proposed legislation using existing resources. There will be no impact to state government expenditures.
- The proposed legislation prescribes the following penalties:
  - A local utility or cooperative found to be not in compliance shall incur reasonable sanctions as determined by the appropriate authority, whether the WWFB, UMRB, or COT, as referred by the COT or the COT’s designee.

- The proposed legislation would require the COT to verify that each utility under the COT's jurisdiction granted by the proposed legislation implemented a CSP.
  - Though the COT has no oversight over cooperatives, the COT can survey those utilities for compliance.
  - The COT will be able to absorb these additional requirements utilizing existing staff and resources resulting in no significant impact to state government.
- Utilities subject to TPUC oversight that fail to comply are subject to reasonable sanctions ordered by the TPUC; fees collected from civil penalties must be remitted to TPUC.
- Due to unknown factors such as how many utilities will fail to comply, the scope of any sanction, if financial, and the extent of any fees collected, any recurring increase to state fee revenue and local expenditures cannot be reasonably determined.

## **IMPACT TO COMMERCE OF BILL AS AMENDED:**

**Other Commerce Impact – The extent and timing of any business expenditures to prepare and implement a cyber security plan and possible payment of penalties cannot reasonably be determined.**

Assumptions for the bill as amended:

- The proposed legislation will require cooperatives and public utilities to prepare, implement, and update a CSP.
  - This will result in an increase in expenditures to cooperatives. However, due to multiple unknown variables such as which cooperatives have existing CSPs, which cooperatives will need to hire consultants to help prepare and implement a CSP, the cost of which will vary based on many factors including but not limited to, utility size, extent of physical assets, the types of existing software used, and any new positions required to maintain the CSPs, a precise impact to cooperative expenditures cannot be reasonably determined.
  - This will result in an increase to business expenditures for public utilities. However, due to unknown factors such as which utilities have a CSP in place, and the costs for creating and maintaining a CSP, a precise increase to business expenditures cannot be reasonably determined. It is assumed that any increase in business expenditures will be offset by an increase in rates to consumers of the public utilities' services. Any impact to commerce or jobs in Tennessee would be not significant.
- The proposed legislation authorizes the TPUC to impose reasonable sanctions for utilities that do not comply with the requirement to implement and maintain a CSP. The extent and timing of any increase to business expenditures due to the payment of penalties cannot reasonably be determined due to unknown factors such as the number of utilities that will be found in violation and the number of utilities that will elect not to pay the fee.

\*Article II, Section 24 of the Tennessee Constitution provides that: *no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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